

# United States District Court

EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

NANETTE COOPER

v.

LEWIS BENAVIDES, ET AL.

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Civil Action No. 4:16-CV-860

(Judge Mazzant/Judge Nowak)

## **MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On November 13, 2018, the report of the Magistrate Judge (Dkt. #63) was entered containing proposed findings of fact and recommendations on Defendants' Motion to Dismiss as to Plaintiff's unconstitutional takings claim and Plaintiff's claim for the violation of Plaintiff's procedural due process rights based on a liberty interest. Specifically, the Magistrate Judge found that the Court needs narrowly tailored discovery pursuant to *Backe v. LeBlanc*, 692 F.3d 645 (5th Cir. 2012), and thus recommended deferring and carrying the issue of qualified immunity as to these claims until it may be decided, including on summary judgment as appropriate.

Having received the report of the Magistrate Judge, and no objections thereto having been timely filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court.

It is, therefore, **ORDERED** that Defendants' Motion to Dismiss (Dkt. #27) is **DEFERRED IN PART**. Specifically, because further factual development is required to determine whether Defendants' qualified immunity defense has merit regarding Plaintiff's claim for the violation of Plaintiff's procedural due process rights based on a liberty interest and Plaintiff's unconstitutional takings claim, the Court defers resolution of such issue(s) to allow

narrowly tailored discovery, as enumerated in the Report and Recommendation, to uncover only those facts needed to rule on the immunity claims. The Parties shall have forty-five (45) days from the date of this Memorandum to conduct the limited discovery/depositions as laid out in the Report and Recommendation and shall have fourteen (14) days from the date of this Memorandum to file any requests for other discovery not previously listed by the Magistrate Judge as permissible discovery that they believe will be needed in order to uncover evidence that may be used to overcome or enforce the defense of qualified immunity.

**SIGNED this 5th day of December, 2018.**

  
AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE